



**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case no: 2025-068876

- (1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED: Yes ☒

Date: 23 August 2025

In the matter between:

SUSANNA JOHANNA VAN ROOYEN

Applicant

and

HOUSTON MICHAEL WARBY

First Respondent

SHERIFF KRUGERSDORP

Second Respondent

IN RE:

HOUSTON MICHAEL WARBY

Plaintiff

And

SUSANNE JOHANNA VAN ROOYEN

Defendant

JUDGMENT

DU PLESSIS J

Introduction

[1] This is an urgent application in which the applicant seeks rescission of a default judgment granted against her on 22 July 2025, together with interim relief interdicting the second respondent from executing any warrant of execution pending the outcome of the rescission application.

[2] The applicant contends that the default judgment was erroneously granted, despite the matter being defended. She further contends that the quantum relied upon by the first respondent was inflated in that payments already made were not taken into account. The respondent disputes these allegations and maintains that the judgment was correctly granted

[3] The issue of rescission does not warrant urgent determination. The application can suitably be heard in the ordinary course. To that extent, the urgency in relation to rescission is not established.

[4] Different considerations apply to the prayer for interim relief. It is not disputed that execution has commenced pursuant to the impugned default judgment. However, the respondent argues that this application is unnecessary because it is not the (informal) practice of the sheriff to proceed with execution once an application for rescission has been launched. Indeed, counsel for the respondent confirmed in court that no steps have been taken towards execution since service of the rescission application.

[5] While that may be so, the fact remains that a warrant of execution has been issued pursuant to the default judgment. The existence of such a warrant creates a risk of execution, even if, as a matter of practice, the sheriff exercises caution when faced with a rescission application. The applicant is entitled to legal certainty while her

rescission application is pending. The reliance on “practice” cannot be elevated into a binding bar against execution.

[6] The interdict does not turn on whether the applicant has established a bona fide defence to the claim and is, thus, entitled to rescission. That is for the rescission court to decide. A rescission application was launched and awaits determination. The function of interim relief in this setting is to preserve the status quo pending that determination. Without such relief, the applicant faces the risk of execution under a judgment which may yet be set aside; with it, the respondent suffers no material prejudice, as his judgment remains enforceable if rescission is refused. His claim remains secured pending the determination of rescission. The balance of convenience favours granting the stay. In the circumstances, the applicant has demonstrated a sufficient basis for the interim relief sought, notwithstanding the respondent’s contention that the application was unnecessary because of the practice of the sheriff not to execute pending rescission.

[7] As to costs, the rescission application was unnecessarily brought as urgent, which justifies criticism of the applicant. Whether the rescission application was brought bona fide, or as a delaying tactic, is for the court deciding the rescission application to decide.

[8] At the same time, the respondent’s opposition to interim relief, in circumstances where a rescission application is pending and execution could lawfully proceed unless stayed, has contributed to the dispute being brought before this court. In my view, neither side is completely blameless. For this reason, a punitive cost order sought is not justified. Instead, the appropriate course is to reserve the costs for determination in the rescission proceedings.

Order

[9] The following order is made:

1. The rules relating to service of process and time limits are hereby dispensed with in terms of Rule 6(12) of the Uniform Court Rules, and this application is heard as a matter of urgency.

2. The rescission application is postponed sine die, to be enrolled on the ordinary opposed motion roll.
3. Pending the determination of the applicant's rescission application in the ordinary course, the second respondent is interdicted from executing any warrant of execution pursuant to the judgment granted on 22 July 2025.
4. The costs of this application are reserved for determination in the rescission proceedings.


WJ du Plessis
Judge of the High Court
Gauteng Division,
Johannesburg

Date of hearing:	21 August 2025
Date of judgment:	23 August 2025
For the applicant:	Ms A Korf instructed by Malan Hitge Nortjé Incorporated
For the respondent:	Mr V de Wit instructed by K Jordaan and Associates Inc Attorneys